*** THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

+ WRIT PETITION Nos.18786, 18855, 18857, 18865, 18898, 18903, 19039, 19075, 19150 and 19258 OF 2004

% TUESDAY, THE THIRTY FIRST DAY OF JULY, TWO THOUSAND AND SEVEN

P. Lakshmi Narayana Reddy,
S/o. P. Subba Reddy, aged 27 years,
Occ: Managing Director of Visveswar Finance &Chit Fund (P) Ltd., 1st Floor, Dhruvatara Apartments, Medinova Compound, Somajiguda, Hyderabad,
R/o. Flat No.2-C, Heritage Apartments, 2nd Floor, Opp: Mental Hospital, SR Nagar, Hyderabad.

…PETITIONER

Versus

The Commissioner of Police,
Hyderabad City Police, Hyderabad,
and others.

…RESPONDENTS

! Counsel for the petitioner : Mr. C.V.Bhaskar Reddy

^ Counsel for the respondents: Government Pleader for Home

< Gist:

> Head Note:

? Cases referred:

1. AIR 1953 SC 394
2. AIR 1977 SC 2091
3. AIR 1976 SC 1471
4. 1988 (Supp) SCC 30
5. 2002 Supp. (1) ALD 124 (DB)

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.18786, 18855, 18857, 18865, 18898, 18903, 19039, 19075, 19150 and 19258 OF 2004

DATED: 31-07-2007

W.P.No.18786 of 2004 and batch

BETWEEN

P. Lakshmi Narayana Reddy,
S/o. P. Subba Reddy, aged 27 years,
Occ: Managing Director of Visveswar
Finance &Chit Fund (P) Ltd., 1st Floor,
Dhruvatara Apartments, Medinova
Compound, Somajiguda, Hyderabad,
R/o. Flat No.2-C, Heritage Apartments,
2nd Floor, Opp: Mental Hospital, SR Nagar,
Hyderabad.

...PETITIONER

AND

The Commissioner of Police,
Hyderabad City Police, Hyderabad,
and others.

...RESPONDENTS

COMMON ORDER:

Petitioner, the Managing Director of Visweswar Finance & chit Fund Company Private Limited, questions the action of the official respondents in registering the respective crimes against him under Sections 3 and 5 of the

Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short 'the Act') read with Sections 420 and 406 of the Indian Penal Code, 1860 as illegal and arbitrary and seeks a direction to set aside the same.

2. Petitioner submits that on the complaints made by certain depositors/subscribers criminal cases have been registered against him under Sections 420 and 406 IPC in 2003 but later the FIR's registered on 11.06.2003 have been altered on 19.08.2004 adding the provisions of Sections 3 and 5 of the Act. He further submits that initially having registered the cases under Sections 420 and 406 IPC alone there was no justification on the part of the official respondents in adding Sections 3 and 5 of the Act. The petitioner having questioned the registration of crime under Sections 420 and 406 IPC as well as Sections 3 and 5 of the Act, restricts his grievance with regard to altering the provision of law punishable under Sections 3 and 5 of the Act contending that as on the date of the registration of the crimes the provision of Sections 3 and 5 of the Act were not applicable to the chit fund company, therefore, alteration of the crime for the offence under Sections 3 and 5 of the Act is illegal and contrary to the provisions of the Act as well Article 20 of the Constitution of India. He submits that under Article 20 of the Constitution of India he is liable for punishment for violation of law in force at the time of the commission of the act charged as an offence, but not in respect of the law, which came into force subsequent to the commission of offence.

3. On the other hand, the learned Government Pleader appearing for Home submits that, no doubt, initially the cases have been registered against the petitioner under Sections 420 and 406 IPC on 11.06.2003 but subsequently the provisions of Sections 3 and 5 of the Act have been invoked and altered FIR's have been issued 19.08.2004. Learned GP further submits that the petitioner has collected deposits from the public and failed to pay the same even on repeated demands;

he was running chit fund business and failed to repay the amounts to the successful bidders and also failed to repay the monetary benefits to the subscribers and the cheques issued by him have bounced. Though initially cases have been registered for cheating and criminal breach of trust, since the petitioner has collected deposits and did not pay the amounts on maturity, the provisions of Sections 3 and 5 of the Act were invoked and FIR's were altered accordingly. _

4. The question that arises for consideration is as to whether the provisions of Sections 3 and 5 of the Act can be invoked by altering the FIR's against the petitioner.

5. The Act came into force with effect from 01.11.1999. As per the statement of objects and reasons, the Act was enacted as number of unscrupulous financial establishments were cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and put to grave hardship by losing their hard savings. To curb these malpractices the State Government has decided to bring a law for protecting the interests of the depositors of financial establishments and for matters connected therewith or incidental thereto. A financial establishment is defined under Section 2(c) of the act as follows:

> " *'Financial Establishment'* means an individual, an association or body of individuals or a firm carrying the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956 or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government, or a banking company as defined under Section 5(c) of the Banking Regulation Act, 1949 or a non-banking financial company as defined in Clause (f) of Section 45-I of the Reserve Bank of India Act, 1934."

6. It is not in dispute that all the chit fund companies do come within the

meaning of a non-banking financial company as defined under clause F of Section 45-I of the RBI Act. The said last limb of Section 2(c) of the Act was deleted by way of amendment substituting Section 2(c), which reads as follows:

> "*'Financial Establishment'* means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a Corporation or a Cooperative Society owned or controlled by any State Government or the Central Government or a banking company as defined under Clause (c) of Section 5 of the Banking Regulation Act, 1949."

7. The substituted Section 2(c) came into effect from 06.11.2003. Thus, it is the case of the petitioner that as on the date of registration of FIR's the provisions of Sections 3 and 5 of the Act were not applicable to the chit fund companies as the chit fund companies are non-banking financial institutions as defined under clause (f) of Section 45-I of the RBI Act, but the same was deleted from the definition of financial establishment on 16.11.2003 only, therefore, it cannot be said that as on the date of registration of FIR's the petitioner has committed the offence under Sections 3 and 5 of the Act.

8. Learned GP for home submits that, no doubt, the provisions of the said Act were not applicable as on the date of registration of FIR's but the offence committed by the petitioner is continuing one,

as he has failed to repay his depositors even after maturity and the cheques issued by him bounced, therefore, in view of the continuing nature of the offence, it cannot be said that the petitioner has not committed the offence under Sections 3 and 5 of the Act.

Therefore, there is no illegality on the part of the respondents in altering the FIR's adding Sections 3 and 5 of the Act. Learned GP further submits that as per Article 20(1) of the Constitution of India, no doubt, the person is liable for conviction for violation of the law in force at the time of commission of the act charged as an offence and as on the date of the commission of offence, as

per law the offence committed by him was only under Sections 420 and 406 IPC but the offence being continuous in nature there was no embargo on the part of the Investigating Officer to add Sections 3 and 5 of the Act.

As on the date of alteration of FIR's there was a prima facie case to show that the petitioner has committed the offence under Sections 3 and 5 of the Act. It is further stated that had the respondents not registered any crime prior to substituted Section 2(c) of the Act came into force it cannot be said that the police is not entitled to register the cases for the offence under Sections 3 and 5 of the Act as on the date of alteration of FIR's, as admittedly there is allegation of committing the offence as on the date of alteration of FIR's and even subsequent to alteration of FIR's. Thus, it is stated that there is no violation of Article 20(1) of the Constitution of India.

9. It is not the case of the petitioner that there is a bar to take cognizance after lapse of the period of limitation under Section 468 of the Code of Criminal Procedure, 1973. Under Section 469(1)(b) Cr.P.C the period of limitation in relation to an offender shall commence, where the commission of offence was not known to the person aggrieved by the offence or to any Police Officer, the first day on which such offence comes to the knowledge of such person or to any other Police Officer, whichever is earlier. Under Section 472 Cr.P.C in case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

In all these cases, the offence committed by the petitioner is continuing offence and therefore, it cannot be said that as on the date of alteration of FIR's adding Sections 3 and 5 of the Act,

the respondents had no power to register the case for the offence under Section 3 and 5 of the Act. As on the date of alteration of FIR's the petitioner is liable to be punished for the offence under Section 3 and 5 of the Act, in view of the undisputed fact that the provisions of the Act are applicable to the chit fund companies, as they come within the definition of financial

establishment under Section 2(c) of the Act. Therefore, it cannot be said that the law was not in force as on the date of altering the FIR's. Had the police registered the case under Sections 3 and 5 of the Act before the amendment came into force, it can be said that there was no law in force to register the cases against the petitioner under Sections 3 and 5 of the Act, which action would be against Article 20 of the Constitution of India.

Therefore, the cases cited by the learned counsel for the petitioner in **RAO SHIV BAHADUR v. STATE OF V.P.**[1] at Para 10; **STATE OF MAHARASHTRA v. KALIAR KOIL SUBRAMANIAM RAMASWAMY**[2] at Para 6; **SRI VIJAYALAKSHMI RICE MILL v. STATE OF ANDHRA PRADESH**[3] at Para 5; **BHAGAT RAM SHARMA v. UNION OF INDIA**[4] at Paras 18 and 19 and **JHUMARMAL DUGAR v. INSPECTOR GENERAL OF POLICE, HYDERABAD**[5] are not applicable to the facts of the instant cases. In the said cases there was no law applicable as on the date of registration of the cases, therefore, it was held that the persons could not have been convicted for an offence for the violation of law, which was not in force as on the date of commission of the offence.

10. In view of the aforesaid facts and circumstances, I am of the opinion that it cannot be said that there was no law in force to register the FIR's against the petitioner for the offence under Sections 3 and 5 of the Act as on the date of alteration of FIR's, therefore, there is no illegality in altering the FIR's for the offence under Sections 3 and 5 of the Act. In view of the substituted Section 2(c) of the Act, the chit fund company is also a financial establishment within the meaning of Section 2(c) of the Act, which came into force with effect from 06.11.2003 and the FIR's were altered only subsequent to the substituted Section 2(c) of the Act. Therefore, I am of the opinion that the action of the respondents in registering various crimes on the complaints of the depositors under Sections 3 and 5 of the Act after the Act came into force, is not illegal or unconstitutional.

The writ petitions are accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

July 31st, 2007
Note: LR Copy to be marked
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[1] AIR 1953 SC 394
[2] AIR 1977 SC 2091
[3] AIR 1976 SC 1471
[4] 1988 (Supp) SCC 30
[5] 2002 Supp. (1) ALD 124 (DB)